6 P. C. 224, 243. This theory, which removes from the insured the burden of proving a waiver, has been ably supported. See J. S. Ewart, "Waiver in Insurance Cases," 18 HARV. L. REV. 364. Its application to a case where the breach of condition occurred, or was first known to the insurer, after the loss, and where there was no possible prejudice to the plaintiff in the defendant's failure to act, is not only novel but against authority. *Ætna Ins. Co.* v. *Mount*, 90 Miss. 642, 44 So. 162; *Goorberg* v. *Western Assurance Co.*, 150 Cal. 510, 89 Pac. 130.

INTERSTATE COMMERCE — CONTROL BY CONGRESS — FEDERAL EMPLOYERS' LIABILITY ACTS — WHETHER STATE COMPENSATION STATUTES ARE SUPERSEDED BY ACT OF 1908. — The plaintiff, a railroad employee, was injured while tamping ties on a roadbed used in interstate commerce. It was agreed that no one was negligent. He sued for recovery under the Workmen's Compensation Law of New York. *Held*, that he may recover. *Winfield* v. *New York Central & Hudson R. R. Co.*, 54 N. Y. L. J. 52, 110 N. E. 614 (N. Y. Ct. of Appeal).

For a discussion of the question whether the federal Employers' Liability Act has superseded the state compensation laws as to interstate commerce, see NOTES, p. 439.

JUDGES — GROUNDS OF DISQUALIFICATION — PREJUDICE. — Burke, one of the miners who took part in the recent Colorado coal strike, was indicted for a murder alleged to have been committed in the course of the riots resulting from the strike. He filed affidavits alleging that the trial judge had been employed as counsel by the mine owners in similar prosecutions against other strikers, and that he was a vigorous partisan of the owners and had openly declared himself hostile to the strikers and their cause, and demanding that another judge be called in to take his place at the trial. The judge held that the facts stated were not sufficient to satisfy the statutory requirement for disqualification. The affiant then applied to the Supreme Court for a writ of prohibition. *Held*, that the writ will issue. *People* v. *Hillyer*, 152 Pac. 149 (Colo. Sup. Ct.).

For a discussion of the questions involved, see NOTES, p. 430.

LANDLORD AND TENANT — ASSIGNMENT OF LEASE — ASSIGNEE'S LIABILITY FOR RENT. — The plaintiff leased premises to a tenant who convenanted not to assign without his permission. The tenant became bankrupt and the lease was assigned to the defendant who later promised the plaintiff to pay the rent in return for the latter's assent to the assignment. The defendant assigned to a third party. The plaintiff sued the defendant for rent accruing after this second assignment. *Held*, that the defendant is not liable. *78th Street & Broadway Co.* v. *Pursell Mfg. Co.*, 155 N. Y. Supp. 259 (Sup. Ct.).

The assignee of a lease ordinarily terminates his liability to the lessor for rent when he makes an assignment over, since this puts an end to the privity of estate between the two. *Consolidated Coal Co.* v. *Peers*, 166 Ill. 361, 46 N. E. 1105; *Johnson* v. *Sherman*, 15 Cal. 287; *Fagg* v. *Dobie*, 3 Y. & C. 96. See 2 TAYLOR, LANDLORD AND TENANT, 9 ed., § 452; WOODFALLS, LANDLORD AND TENANT, 19 ed., 302. However, the liability of the assignee will continue in case the lessor can base his claim against him for rent upon privity of contract. *Springer* v. *De Wolf*, 194 Ill. 218, 62 N. E. 542; *Lindsley* v. *Schnaider Brewing Co.*, 59 Mo. App. 271. See JONES, LANDLORD AND TENANT, § 462. But, of course, the lessor must show that the alleged contract was supported by proper consideration. *Dougherty* v. *Matthews*, 35 Mo. 520. In the principal case the only consideration which can be found to support the promise of the assignee to pay the rent is the lessor's assent to the assignment. And it is now well settled that an assignment of a lease made by the trustee of a bankrupt lessee

is one by operation of law which does not require the assent by the lessor. *Gazlay* v. *Williams*, 210 U. S. 41, discussed in 22 HARV. L. REV. 146; *In re Gutman*, 197 Fed. 472; *Doe* v. *Bevan*, 3 M. & S. 353. See JONES, LANDLORD AND TENANT, § 466; WOODFALLS, LANDLORD AND TENANT, 19 ed., 319. Hence such assent cannot be treated as consideration.

LIBEL AND SLANDER — DAMAGES — EVIDENCE: MAY PLAINTIFF GIVE EVIDENCE OF GOOD CHARACTER IN AGGRAVATION OF DAMAGES? — In an action for slander the plaintiff was permitted to introduce evidence of his honesty. It had not been challenged by the defendant either by evidence or plea of justification. *Held*, that the evidence was properly admitted. *Deitchman* v. *Bowles*, 179 S. W. 249 (Ky.).

In actions of defamation, the reputation of the plaintiff is presumed to be good until proof to the contrary. Many courts and writers have based thereon a rule that, unless his character has been attacked, the plaintiff cannot offer evidence of his good character in aggravation of damages. *Guy* v. *Gregory*, 9 C. & P. 584, 587; *Blakeslee* v. *Hughes*, 50 Oh. St. 490, 34 N. E. 793. See ODGERS, LIBEL AND SLANDER, 4 ed., 366; 1 WIGMORE, EVIDENCE, § 76. *Contra*, *Adams* v. *Lawson*, 17 Gratt. (Va.) 250; *Hitchcock* v. *Moore*, 70 Mich. 112, 113, 37 N. W. 914, 916. *Cf. Stafford* v. *Morning Journal Ass'n*, 142 N. Y. 598, 37 N. E. 625. See 4 SUTHERLAND, DAMAGES, 3 ed., § 1211. But the previous reputation of the plaintiff is certainly probative of the extent of his injury, and it seems illogical to exclude relevant evidence merely because there is a *prima facie* presumption which makes the rendering of such evidence no longer a prerequisite to recovery. See *Adams* v. *Lawson*, 17 Gratt. (Va.) 250, 260. Especially is this so when the presumption, as here, covers a conclusion incapable of accurate definition; for the plaintiff's character may be appreciably better than the impression that an instruction that "the plaintiff's character is presumed to be good" would convey to the jury, and he should have an opportunity to prove it so. See *Shroyer* v. *Miller*, 3 W. Va. 158, 161. Again, the very nature of the action tends to lower the plaintiff's reputation below par in the minds of the jury, for in all cases of defamation, at least that attack on the plaintiff's character on which the suit is based is before the jury, and such accusations, though not believed, still tend to poison the minds of the hearers against the reputation of the person defamed. Finally, as the principal redress sought in most cases of libel or slander is the vindication of the plaintiff before the eyes of the community, to deny him the right to prove his good character is to deprive him of the most effective means of obtaining that relief which he seeks and to which he is entitled. *Bennett* v. *Hyde*, 6 Conn. 24.

SURETYSHIP — SURETY'S DEFENSES: GENERAL PRINCIPLES OF CONTRACT — PARTNERSHIP AS PRINCIPAL: EFFECT OF DISSOLUTION ON CONTINUING GUARANTY. — The plaintiff became surety to the defendant county for any deposits it might make in "the Hallock Bank." No outsider knew which particular members of a certain family owned the bank, nor whether it was a corporation, a partnership, or an individual enterprise. On the failure of the bank the plaintiff paid its debt to the defendant. The plaintiff later learned that the bank had been a partnership, and that one who was a partner at the time the plaintiff became surety had died before the debt to the defendant was incurred. The plaintiff now sues the defendant county to recover back the amount he paid. *Held*, that he may recover. *Richards* v. *Steuben County*, 155 N. Y. Supp. 571 (Sup. Ct.).

The contract of an accommodation surety is strictly construed in his favor, and cannot be extended by implication beyond its exact terms. *City of Sterling* v. *Wolf*, 163 Ill. 467, 45 N. E. 218; *State* v. *Dayton*, 101 Md. 598, 61 Atl. 624. An instance of this is the established rule that the surety for a partnership is